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MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

House Bill 4473 (Substitute H-1)
Sponsor: Rep. Jason Allen

Senate Bill 151 as passed by the Senate
Sponsor: Sen. Ken Sikkema

First Analysis (5-18-99)
**Committee: Local Government and
Urban Policy**

THE APPARENT PROBLEM:

Under Public Act 35 of 1951, two or more municipal corporations, by intergovernmental contract, may form a group self-insurance pool to provide participating municipal corporations with risk management and coverage for pool members and employees. A municipal corporation may include any county, county road commission, township, village, school district, community college district, metropolitan district, court district, public authority, drainage district, or any local governmental authority or agency with the power to enter into contracts.

Group self-insurance pools may include casualty insurance, property insurance, automobile insurance including motor vehicle liability, surety and fidelity insurance, and umbrella and excess insurance. However, the act prohibits a group self-insurance pool from providing coverage for hospital, medical, surgical, or dental benefits to the employees of member municipalities (except in regard to automobile insurance coverage). This means, then, that local governmental units cannot provide health insurance for their employees through municipal self insurance pools.

At the same time, the Insurance Code allows business employers, under certain conditions, to provide health care benefits (and other benefits) through multiple employer welfare arrangements (MEWAs). Chapter 70 of the code regulates MEWAs. A MEWA is prohibited from establishing an employee benefit plan unless it obtains a certificate of authority from the Insurance Commissioner (unless the plan is fully insured). Chapter 70 lists several conditions that a MEWA must meet to obtain a certificate, including a requirement that the employers in a MEWA be members of an association or group of five or more businesses that are in the same trade or industry,

including closely related businesses that provide support, services, or supplies primarily to that trade or industry. (See *BACKGROUND INFORMATION*, below.)

Some people believe that local governments and school districts (a form of municipal corporation) should be allowed to pool their resources in an attempt to reduce the ever-increasing costs of health care, through the use of MEWAs. In addition, it has been suggested that the Insurance Code be amended to allow employers other than businesses to form a MEWA, and to make it easier for both business employers and other employers to qualify to form a MEWA.

THE CONTENT OF THE BILLS:

House Bill 4473 and Senate Bill 151 would amend existing laws to expand multiple employer welfare arrangements, an insurance pool often called by its acronym, MEWA.

Specifically, House Bill 4473 would amend the Insurance Code (MCL 500.7011 and 500.7060) to allow the insurance commissioner to issue a certificate of authority to a MEWA when a group of two or more businesses or entities are in the same trade or industry or same type of service, including closely related businesses that provide support, services, or supplies primarily to that trade, service, or industry.

House Bill 4473 also specifies that a MEWA transacting businesses in Michigan would not be subject to chapter 78 of the Insurance Code, but instead would be subject to chapter 81. Chapter 78 of the Insurance Code was repealed by Public Act 302 of 1989. The chapter was replaced by chapter 81, in

House Bill 4473 and Senate Bill 151 (5-18-99)

order to provide an entirely new procedure to regulate the supervision, rehabilitation, and liquidation of insurance companies.

Senate Bill 151 would amend Public Act 35 of 1951 (MCL 124.5) to permit two or more municipal corporations to form an MEWA under the Insurance Code, for hospital, medical, surgical, or dental benefits.

Note: Senate Bill 151 (S-2) was reported by the Senate Health Policy Committee, and then passed by the Senate on March 25, 1999. House Bill 4473 (H-1) is identical to Senate Bill 442 (S-1).

BACKGROUND INFORMATION:

MEWA Conditions. Under current law, the insurance commissioner can issue a certificate of authority to a MEWA when a group of five or more businesses are in the same trade or industry, including closely related businesses which provide support, services, or supplies primarily to that trade or industry. In order for a certificate of authority to be issued to the group, certain conditions must be met, including but not limited to the following: 1) the MEWA has applications from not less than five employers who will provide similar benefits for not less than 200 participating employees, and whose annual gross premiums or contributions to the plan will be at least \$20,000 for a plan that provides only vision benefits, \$75,000 for a plan that provides only dental benefits, and \$200,000 for all other plans; 2) there is a written commitment for excess loss insurance; 3) there is an acceptable procedure for handling claims in the event of dissolution; and 4) the MEWA has delivered to the commissioner a bond, deposit, or security for the protection of subscribers as the commissioner requires.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, Senate Bill 151 would have no fiscal impact on state government, although the bill could provide some administrative savings for local governments. The Senate Fiscal Agency also notes that a bill identical to House Bill 4473 (H-1), Senate Bill 442 (S-1), would have no fiscal impact on state or local government. (3-23-99)

ARGUMENTS:

For:

Health insurance costs continue to rise, putting pressure on the limited resources of both public and private employers. While two or more local units of government or school districts are now allowed to form insurance pools for many purposes, such as casualty, property, and liability insurance, Public Act 35 of 1951 specifically prohibits these entities from contracting to form a pool for the provision of health insurance. At the same time, the Insurance Code allows businesses to form MEWAs; MEWAs have worked well for some employer groups, but the code requires that an MEWA consist of at least five businesses in the same trade or industry, which restricts the ability of businesses to form MEWAs and precludes formation by a public entity or service firm. By allowing local public entities to form MEWAs for the purpose of providing health insurance, and reducing the minimum number of employers that can join to form an MEWA, the bills would remove any conflicts between the Insurance Code and Public Act 35 and remove obstacles that now restrict both public and private entities from forming pools for health insurance. In turn, the bills would give these entities an opportunity to reduce the costs of health benefits by allowing employers to explore another option to traditional health insurance.

In addition, the Insurance Bureau reports that reducing the minimum number of participants to two would make the MEWA statute consistent with other Michigan laws that require only two members to form a group, such as a workers' compensation self-insured group or a trustee group for group disability insurance. Also, according to the bureau, the federal definition of an MEWA requires that only two employers participate to form the group.

Against:

According to the Insurance Bureau, a traditional insurer may have greater financial stability than a MEWA, because MEWAs are not required to maintain capital and surpluses to pay claims as are traditional insurers; further, MEWAs do not protect policyholders against insolvency because they do not participate in guaranty funds. Further, lowering from five to two the number of employers that may form an MEWA could reduce the stability of the MEWA.

Response:

The Insurance Bureau also reports that the regulation of MEWAs is more comprehensive than the bureau's regulation of intergovernmental insurance pools formed under other statutory provisions. In fact, the bureau contends that the increased ability to regulate the operation of an MEWA gives employers and employees greater protection. Further, under the Insurance Code, an MEWA must cover at least 200 participating employees. House Bill 4473 (H-1) would not change that requirement, meaning that despite the reduced number of participating employers, the size of the risk pool would remain unchanged.

POSITIONS:

The Michigan Insurance Bureau supports the bill. (5-13-99)

The Michigan School Board Association supports the bill. (5-14-99)

The Traverse Bay Area Intermediate School District supports the bill. (5-13-99)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.